

REMARKS/ARGUMENTS

Applicants respectfully request reconsideration of this application in view of the present amendments and the following remarks. By this amendment, claims 1 and 15 are amended. As a result, upon entry of this amendment claims 1-15 are pending in this case, with claims 1, 9 and 15 being independent claims. Because no claims are added by this amendment, it is believed that no additional fees are due for the consideration of this paper. However, if additional fees are due, the Commissioner is authorized to charge such fees to deposit account number 13-2855. A copy of this paper is enclosed.

Claim Amendments

Claim 1 is amended to more clearly recite that the second portion of the adjustment mechanism is configured to retentively engage the first portion, and that the body has a first cross-section when the second portion retentively engages the first portion in a first position and a second cross-section when the second portion retentively engages the first portion in a second position. Claim 1 as further amended to more clearly recite that the circumference of the first cross-section of the body is equal to the circumference of the second cross-section of the body. Claim 15 is similarly amended to more clearly recite that the circumference of the roller is the same when the point of engagement between the first and second portions of the adjustment mechanism is changed to reconfigure the roller from a generally circular cross-section to a generally oval cross-section. The amendments to claims 1 and 15 are supported by the specification as originally filed at least at Figs. 1-3 and the accompanying text at page 4, line 8 through page 6, line 10 illustrating the roller 20 having the second portion 32 of the adjustment mechanism 24 engaging the first portion 30 such that the roller 20 has a generally circular cross-section when the second portion 32 engages the first portion 30 at position A (Fig. 1), and generally ovoid cross-sections when the second portion 32 engages the first portion 30 at positions B and C (Figs. 2 and 3, respectively). Further, the embodiment of the roller 20 illustrated in Figs 1-3 illustrates the body 22 being formed as a continuous tubular cylinder, and those skilled in the art will understand that the circumference of the outer cylinder 28 is substantially the same when the roller 20 has the circular cross-section of Fig. 1 and the ovoid cross-sections of Figs. 2 and 3. Applicant respectfully submits that the amendments to claims 1 and 15 do not present new matter and do not raise new issues, and

respectfully requests entry of the present amendments to claims 1 and 15 and consideration of the claims as amended.

Claim Rejection Under 35 U.S.C. §§ 102(b) and 103(a)

Claims 1, 3 and 5 were rejected under 35 U.S.C. § 102(b) as being anticipated by Secreto (U.S. Patent No. 6,394,101), claims 1, 8 and 15 were rejected under 35 U.S.C. §102(b) as being anticipated by Garrett (U.S. Patent No. 3,623,491), claim 1 was rejected under 35 U.S.C. §102(b) as being anticipated by Gonzalez (U.S. Patent No. 4,785,834), claims 1, 2, 6 and 7 were rejected under 35 U.S.C. §102(b) as being anticipated by Porter (U.S. Patent No. 5,165,430), claims 3-5 were rejected under 35 U.S.C. §103(a) as being unpatentable over Garrett in view of Brenner (U.S. Patent No. 5,944,029), and claim 5 was rejected under 35 U.S.C. §103(a) is being unpatentable over Secreto in view of Brenner. Claims 9-14 are allowed. Applicants respectfully request reconsideration in view of the present amendments and respectfully submit that pending claims 1-8 and 15 are not properly rejectable over the applied references for the following reasons.

Regarding the rejections of claims 1, 3 and 5 in view of Secreto, either alone or in combination with Brenner, applicant respectfully submits that neither Secreto nor Brenner discloses or suggests an adjustable hair roller having a first portion of an adjustment mechanism extending from an inner surface of a body being retentively engaged by a second portion of the adjustment mechanism extending inwardly from the inner surface opposite the first portion as recited in claim 1 as amended. Fig. 3 of Secreto illustrates that the protrusions 26 on the back surface 18 of the elongated flexible strip are received in apertures 24 through the front surface 16 of the elongated flexible strip, but Secreto does not disclose or suggest the protrusions 26 engaging each other or any other structure extending inwardly from the back surface 18 of the elongated flexible strip. Similarly, Brenner discloses hooks 36 on one surface of a curling device 20 engaging eyelets 34 on the opposite surface of the curling device 20. Because Secreto and Brenner failed to disclose or suggest portions of an adjustment mechanism extending inwardly from an inner surface of a hair roller engaging each other, it follows that claims 1, 3 and 5 are neither anticipated nor rendered obvious by Secreto and Brenner.

Turning to the rejections in view of Garrett, either alone or in combination with Brenner, the references fail to disclose or suggest an adjustable hair roller wherein the circumference of the body of the roller is the same when the body is adjusted between a first cross-section and a second cross-section as recited in claims 1 and 15. Garrett specifically discloses a hair roller that is circumferentially expandable in order to stretch a lack of wound hair. (See Garrett, Abstract; col. 1, lines 38-57). Garrett's hair roller 1 comprises a tube 2 with a slit 3 that allows the roller 1 to be expanded by an expansion means 8 by rotation of a handle 10. Applicant does not concede that the reinforced portion 5 and expansion means 8 constitute first and second portions of an adjustment mechanism as recited in the claims as asserted on page 3 of the Office action. However, assuming *arguendo* that the identified components of Garrett constitute an adjustment mechanism, the circumference of Garrett's hair roller 1 increases when the expansion means 8 moves from the position shown in Fig. 2 to the position shown in Fig. 3. Moreover, because Garrett's stated objective is to provide a circumferentially expandable roller, Garrett teaches away from a hair roller having a constant circumference as recited in the claims and, consequently, offers no suggestion or motivation for combining Garrett with Brenner or any other reference to arrive at an adjustable hair roller as recited in the claims. For these reasons, withdrawal of the rejections of claims 1, 3-5, 8 and 15 in view of Garrett either alone or in combination with Brenner is respectfully requested.

The Gonzalez and Porter references are similar in that they teach hair gripper or clasp devices, and do not relate to hair rollers at all, let alone adjustable hair rollers as recited in the claims. For example, Figs 1 and 3 of Gonzalez, and Fig. 2 of Porter show strands of hair being received in and retained by their devices. Consequently, at most the inner surfaces of these devices are configured to engage strands of hair. Contrary to the assertion on page 4 of the Office action, Gonzalez provides no teaching or suggestion whatsoever that the outer layer 34' shown in Fig. 4 is adapted to engage strands of hair. For at least these reasons, Gonzalez and Porter neither anticipate nor render obvious the currently pending claims which are directed to an adjustable hair roller.

Further, assuming these devices could be construed to be hair rollers, the devices of Gonzalez and Porter have different circumferences when configured in the first and second

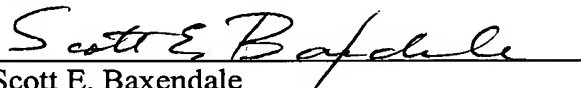
positions as identified in the Office action. Regarding Gonzalez, the Office action identifies the first position of the gripper device as that shown in Figs. 2 and 4 wherein the device is laid out flat and, consequently, does not have a circumference. Even if the length of the gripper device is considered to be its circumference when laid out flat, the circumference of the gripper device as shown in Fig. 3 in the closed position will be less because the ends must overlap for attachment of the fastening means 40. In addition, the female portion of the fastening means 40 extends from the inner surface of the device while the male portion of the fastening means 40 extends from the outer surface of the device such that the fastening means 40 is not an adjustment mechanism as recited in claim 1 having first and second portions extending inwardly from the inner surface of the device.

With regard to Porter, to the extent of Porter's clasp can be characterized as having a circumference when the rib 33 is disconnected from the clamping boss 31, such a circumference is larger than the circumference when the rib 33 is engaged by the boss 31 to close the clasp around the inserted strands of hair. Moreover, Porter does not disclose or suggest that the boss 31 engages the rib 33 in two different positions such that the clasp hands two different cross-sections as recited for the adjustable hair roller in claim 1 as amended. Because Gonzalez and Porter are not hair rollers as recited in the claims, and do not disclose or suggest at least the limitations discussed above, applicant respectfully request withdrawal of the rejections of claims 1, 2, 6 and 7 in view of Gonzalez and Porter.

For at least the foregoing reasons, reconsideration and withdrawal of the rejection of the claims and allowance of the currently pending claims are respectfully requested. Should the Examiner wish to discuss the foregoing or any matter of form in an effort to advance this application towards allowance, she is urged to telephone the undersigned at the indicated number.

Dated: May 8, 2006

Respectfully submitted,

By: 
Scott E. Baxendale
Registration No.: 41,605
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive, Suite 6300
Sears Tower
Chicago, Illinois 60606-6357
(312) 474-6300
Attorney for Applicants